



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

Site:	Bennington Ld Fl.
Break:	11.9
Other:	Johnson

URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY

Certified Mail: Return Receipt Requested

March 18, 1991

Mr. Thomas J. Courtney, Esq.
Battery Group Counsel
Johnson Controls, Inc.
P.O. Box 591
Milwaukee, WI 53201



SDMS DocID

549077

Re: Notice of Potential Liability and Special Notice
Pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 9622(e),
for Remedial Investigation/Feasibility Study for the
Bennington Landfill Superfund Site in Bennington, Vermont.

Dear Mr. Courtney:

This letter notifies you of the potential liability which Johnson Controls, Inc. has or may have incurred with respect to the Bennington Landfill Superfund Site in Bennington, Vermont (the "Site") and makes a formal demand for reimbursement of the costs that the United States Environmental Protection Agency ("EPA") has incurred in responding to the environmental problems at the Site. This letter also provides notice of a period of negotiations with EPA regarding an agreement in which Johnson Controls, Inc. and others voluntarily participate in performing or financing the remaining response actions necessary at the Site. To assist you in participating in these negotiations, this letter also provides information about other potentially responsible parties ("PRPs") at the Site.

The Site is situated on 28 acres north of Houghton Lane in the Town of Bennington, Bennington County, Vermont. The Site operated as a municipal landfill from 1969 to 1987, accepting residential, commercial, and industrial waste. EPA has included the Site on the Superfund National Priorities List.

NOTICE OF POTENTIAL LIABILITY AND
REQUEST FOR PARTICIPATION IN CLEANUP ACTIVITIES

The U.S. Congress authorized EPA to respond to the release or threatened release of hazardous substances under the



Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., ("CERCLA") and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA"). EPA has documented the release and threatened release of hazardous substances, pollutants or contaminants at the Site. EPA has spent public funds and is considering spending additional public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a PRP or PRPs will properly perform or finance such actions, EPA will itself perform those actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and § 9607(a), Section 7003 of RCRA, and other laws, responsible parties may be obligated to implement relief actions deemed necessary by EPA to protect the public health, welfare or environment. Responsible parties may be liable under those same laws for all costs (including interest) incurred by the government in responding to any release or threatened release at the Site. Such costs may include, but are not limited to, expenditures for investigation, planning, cleanup response, and enforcement activities. In addition, potentially responsible parties may be requested to pay damages for injury to, destruction of, or loss of natural resources, including the costs to assess such damages.

Responsible parties under CERCLA include current and former owners and operators of the Site, as well as persons who arranged for disposal of hazardous substances found at the Site (often called "generators"), or persons who accepted hazardous substances for transport to the Site (often called "transporters").

EPA has evaluated a large body of evidence in connection with its investigation of the Site, including Town of Bennington records, state records, federal records, corporate records, and interviews. Based on that evidence, EPA has information indicating that you are a potentially responsible party ("PRP") under Section 107(a) of CERCLA with respect to the Site. Specifically, EPA has reason to believe that Johnson Controls, Inc. arranged by contract, agreement or otherwise for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances found at the Site. Moreover, Johnson Controls is the successor to Globe-Union, Inc., a company which arranged by contract, agreement or otherwise for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances found at the Site, and thus has assumed the liabilities of Globe-Union regarding the Site.

By this letter, EPA notifies Johnson Controls, Inc. of its potential liability with regard to the Site. EPA therefore encourages you, as a potentially responsible party, to reimburse

EPA for the costs incurred to date and to perform voluntarily or to finance the response activities described below that EPA has determined are required at the Site.

DEMAND FOR PAYMENT OF COSTS INCURRED TO DATE

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred costs in response to conditions at the Site amounting to at least \$219,311.40 as of January 22, 1991. Those response actions have included without limitation a site investigation and a potentially responsible party search. EPA anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws, including the response activities described below. In accordance with Section 107(a) of CERCLA, EPA hereby demands payment of \$219,311.40, plus any and all interest authorized to be recovered under that Section or under any other provisions of law. Demand is also hereby made under those authorities for payment of interest on all future costs that EPA may accrue in regard to the Site.

FUTURE RESPONSE ACTIONS

EPA is planning to conduct the following studies and activities in response to conditions at the Site:

1. Remedial Investigations ("RI") to identify the local characteristics of the Site and to define the nature and extent of soil, air, surface water, and ground water contamination at the Site; and
2. Feasibility Studies ("FS") to evaluate the feasibility of possible remedial actions to remove or contain hazardous substances, pollutants or contaminants at the Site.

In addition to those activities, EPA may, pursuant to its authorities under CERCLA and other laws, decide that other cleanup activities are necessary at the Site to protect public health, welfare, or the environment.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the CERCLA Section 122(e) Special Notice procedures will facilitate a settlement between EPA and PRPs for this Site. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day period, you and other PRPS are invited to participate in formal negotiations with EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs (including you) to conduct or finance the response activities required at the Site. The 60-day negotiation period ends on May 21, 1991. The 60-day negotiation moratorium will be extended for an additional 30 days if the PRPs provide

EPA with a good faith offer to conduct or finance the Remedial Investigation/Feasibility Study ("RI/FS"). Should a 90-day negotiation moratorium take place, negotiations will conclude on June 20, 1991. If settlement is reached between EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in a Consent Order.

PRP STEERING COMMITTEE

EPA recommends that all PRPs meet to form a PRP steering committee responsible for representing the interests of the PRPs. Establishing a manageable group is a critical component of the negotiation process.

To facilitate negotiations, EPA proposes a PRP meeting on Wednesday, April 10, 1991 at EPA's office at 90 Canal Street in Boston. From 1:00 to 1:30 p.m., EPA will describe the existing knowledge about conditions at the Site and the response activities that have been taken at the Site to date. From 1:30 to 2:00 p.m., EPA will respond to questions posed by the PRPs. The time from 2:00 to 5:00 p.m. is available for PRPs to meet among themselves, without EPA being present. Because of the large number of potentially responsible parties, EPA will not negotiate with individual persons or companies, but will ask the PRPs at the meeting to appoint a committee to represent them in further negotiations.

NEGOTIATION PROCEDURES AND GOOD FAITH OFFER

Under the terms of Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), responsible parties have sixty (60) days from receipt of this notice in which to make a good faith proposal, in writing, to perform and finance the response activities. If a good faith proposal is submitted by responsible parties within the sixty (60) day period, EPA will negotiate with the parties making the proposal during the remainder of the negotiation moratorium period in an attempt to reach an agreement with those parties. Any agreement reached for the performance and financing of the response actions at the Site will be embodied in an Administrative Order for Remedial Investigation/Feasibility Study and a Cost Recovery Administrative Agreement containing terms consistent with the provisions of Section 122 of CERCLA. A Statement of Work (Attachment A), a draft Administrative Order (Attachment B), and a draft Administrative Agreement (Attachment C) are enclosed with this letter. These documents are being reviewed by the state of Vermont and may be subject to revision by EPA based on EPA's review of any comments received from the state.

A good faith offer to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs' qualifications and willing-

ness to conduct or to finance the RI/FS and includes the following elements:

1. A statement of willingness by the PRPs to conduct or finance an RI/FS that is consistent with EPA's Statement of Work, draft Administrative Order, and draft Administrative Agreement and that provides a sufficient basis for further negotiations.

2. A paragraph-by-paragraph response to EPA's Statement of Work, draft Administrative Order, and draft Administrative Agreement. The paragraph-by-paragraph response must be in a form that highlights the proposed changes. EPA prefers that the response be in the form of a redlined version of the relevant document.

3. A detailed description of a Work Plan identifying how the PRPs plan to proceed with the work.

4. A demonstration of the PRPs' technical capability to carry out the RI/FS, including the identification of the firms(s) that may actually conduct the work under a contract with the PRPs or a description of the process they will use to select any contracted firm(s).

5. A demonstration of the PRPs' capability to finance the RI/FS.

6a. A statement of willingness by the PRPs to reimburse EPA for past response costs. The PRPs should quantify those costs so that the statement of willingness includes a monetary amount.

6b. A statement of willingness by the PRPs to reimburse EPA for all costs incurred in overseeing the PRPs' conduct of the RI/FS.

EPA considers the response to both parts of element 6 to be critical in evaluating offers from PRPs.

7. The name, address, and telephone number of the party or steering committee who will represent the PRPs in negotiations.

If EPA determines that a good faith proposal has not been submitted within the first sixty (60) days of the moratorium period, EPA may thereafter terminate the negotiation moratorium period pursuant to Section 122(e)(4) of CERCLA and commence such cleanup or enforcement actions as may be appropriate given the status of negotiations.

INFORMATION RELEASE

EPA would like to encourage good faith negotiations between you and EPA and among you and other parties potentially responsible for the Site. To assist responsible parties in preparing a proposal and in negotiating with EPA concerning this matter, EPA is providing the following information:

1. A list of the names and addresses of potentially responsible parties to whom this notification is being sent. That list represents EPA's preliminary findings on the identities of potentially responsible parties. Inclusion on or exclusion from the list does not constitute a final determination by EPA concerning the liability of any party for the hazard or contamination at the Site. (Attachment D)
2. A list of the nature of substances contributed by each potentially responsible party identified at the Site. Under the terms of Section 122(e)(3)(C) of CERCLA, this list shall not constitute an apportionment or other statement by EPA on the divisibility of harm or causation in connection with the Site, nor shall the list be admissible as evidence in any proceeding. (Attachment D)

Please be advised that EPA has determined that the abovementioned list is from investigatory records compiled for law enforcement purposes. The public release of the records described above may interfere with enforcement proceedings and disclose investigatory techniques and procedures. As such, those records are exempt from mandatory disclosure under the investigatory records exemption of the Freedom of Information Act, 5 U.S.C. § 552(b)(7).

Nevertheless, a limited disclosure of those records is being made in order to further the settlement negotiations and to encourage communication among the parties. Those records are being provided as a discretionary release of information to the potentially responsible parties, and they should not be disclosed further or made publicly available in any context unless you are given prior approval by EPA.

ADMINISTRATIVE RECORD

In accordance with Section 113(k) of CERCLA, EPA will establish or an Administrative Record containing the documents used by EPA to select the appropriate response action for the Site. This Administrative Record will be available to the public for inspection and comment. One location for this Administrative Record will be the EPA Records Center on 90 Canal Street in

Boston, Massachusetts. Another location for the Administrative Record shall be in Bennington, Vermont at a place near the Site.

PRP RESPONSE AND EPA CONTACT PERSON

You have sixty (60) calendar days from receipt of this notice to notify EPA in writing of your willingness to negotiate the performance and financing of the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. You may be held liable by EPA under Section 107 of CERCLA for the cost of the cleanup activities EPA performs at the Site.

In addition, EPA has notified the Federal Natural Resource Trustee(s) of its intent to perform or enter into negotiations for the performance or financing of response actions at the Site.

Your response to this Notice Letter should be sent to:

U.S. Environmental Protection Agency
Terrence R. Connelly
Waste Management Division
Vermont Superfund Section Mail Code HPS CAN-1
J.F.K. Federal Building
Boston, MA 02203
Telephone: (617) 573-9638

If you have any technical questions about the Site or the Statement of Work, please contact Terrence Connelly as noted above. If you have legal questions or questions about the Administrative Order or Administrative Agreement, please contact Andrew Raubvogel at U.S. Environmental Protection Agency mail code RCV, Office of Regional Counsel, J.F.K. Federal Building, Boston, MA 02203, (617) 565-3169.

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final position of EPA on any matter set forth herein.

Due to the serious environmental and legal problems posed by conditions at the Site, EPA strongly urges you to give this matter your immediate attention so that you may promptly respond to this special notice letter.

Thank you for your cooperation.

Sincerely,



Merrill S. Hohman, Director
Waste Management Division

Enclosures

cc: Bruce Diamond, Director, EPA Office of Waste Programs
Enforcement
Ray Ludwiszewski, Acting Assistant Administrator, EPA Office
of Enforcement
Andrew Raubvogel, EPA Office of Regional Counsel
Bruce Marshall, Chief, EPA Superfund Enforcement Support
Section
Terrence Connelly, EPA Remedial Project Manager
Mark DiStafano, Office of Vermont Attorney General
Stanley Corneille, Vermont Remedial Project Manager